

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

VEVELYN JOHNSON, ) NO. CV 08-05328 SS  
Plaintiff, )  
v. ) **MEMORANDUM DECISION AND ORDER**  
MICHAEL J. ASTRUE, )  
Commissioner of the Social )  
Security Administration, )  
Defendant. )  
\_\_\_\_\_  
)

**INTRODUCTION**

Vevelyn Johnson ("Plaintiff") brings this action seeking to overturn the decision of the Commissioner of the Social Security Administration (hereinafter the "Commissioner" or the "Agency") denying her application for Supplemental Security Income ("SSI"). The parties consented, pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the undersigned United States Magistrate Judge. This matter is before the Court on the parties' Joint Stipulation ("Jt. Stip.") filed on March 6, 2009. For the reasons stated below, the decision of the Commissioner is AFFIRMED.

## PROCEDURAL HISTORY

Plaintiff filed applications for SSI and Disability Insurances Benefits ("DIB") on August 8, 2006. (Administrative Record ("AR") 83, 88).<sup>1</sup> Plaintiff listed December 31, 1999 as the onset date of her disability.<sup>2</sup> (Id.). The Commissioner denied DIB benefits on August 13, 2006, (AR 48), and SSI benefits on September 21, 2006. (AR 52). Plaintiff submitted a request for reconsideration on November 1, 2006.<sup>3</sup> (AR 58). On January 11, 2007, the Commissioner denied reconsideration. (AR 60-64). Plaintiff requested a hearing before an administrative law judge ("ALJ") on February 12, 2007. (AR 66).

On November 21, 2007, Plaintiff's hearing proceeded before ALJ Jeffrey A. Hatfield. (AR 16). The ALJ rendered an unfavorable decision on November 29, 2007. (AR 6). On December 20, 2007, Plaintiff requested Appeals Council review. (AR 4). The Appeals Council denied Plaintiff's request for review on July 18, 2008. (AR 1). On August 19, 2008, Plaintiff filed the instant complaint.

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<sup>1</sup> While the applications are dated August, 8, 2006, the administrative law judge's decision states that the applications were filed on July 31, 2006. (AR 9).

<sup>2</sup> Plaintiff subsequently amended the onset date of her disability to July 31, 2006. (AR 19-20).

<sup>3</sup> Plaintiff did not request reconsideration of her DIB denial and subsequently moved to dismiss her DIB claim. (AR 19).

## FACTUAL HISTORY

A. Generally

5 Plaintiff was born on March 24, 1959. (AR 83, 88). Plaintiff  
6 received a GED and attended "a couple of years of college." (AR 22).  
7 Plaintiff's past occupations included work as a bus driver, a cashier,  
8 and as a home attendant. (AR 36). Plaintiff claims disability stemming  
9 from "degenerate spinal column disease, lumb[a]r spine L5-S1 with  
10 allegations of radiculopathy to the right leg[,} . . . some  
11 complications . . . with the right hip[,] and "obesity." (AR 20).

**B. Relevant Medical History**

## 1. Treating Physicians

17 Plaintiff's medical records show that she was seen repeatedly by  
18 Universal Care during 2005 and 2006. (AR 144-47, 150-58, 160-67, 173,  
19 175-77). On September 20, 2005, Plaintiff was seen by a member of the  
20 nursing staff<sup>4</sup> who noted that Plaintiff complained of "back pain" and  
21 sought to refill her medication, described as "HTN." (AR 166). On  
22 October 18, 2005, Plaintiff was seen by the same member of the nursing  
23 staff who again noted that Plaintiff complained of "[b]ack pain," and  
24 sought to refill her medication, described as "HTN." (AR 165). On  
25 December 13, 2005, Plaintiff was seen by Dr. Phillip Le, M.D. ("Dr. Le")  
26 and a member of the nursing staff, Kumudu Mohan, M.A. ("Nurse Mohan"),

<sup>4</sup> The name of this person is illegible. (AR 166).

1 for "[b]ack [p]ain." (AR 163). On December 19, 2005, Plaintiff was  
2 seen by a member of the nursing staff, Victor Nava, M.A., for a "lipid  
3 panel." (AR 162). On December 28, 2005, Plaintiff was seen by Dr. Le.  
4 (AR 161). On January 3, 2006, Plaintiff was again seen by Dr. Le, who  
5 noted that Plaintiff sought refills for her medication. (AR 160). On  
6 January 31, 2006, Plaintiff was seen by Dr. Hung Nguyen, M.D., who noted  
7 that Plaintiff complained of "[b]ack pain" and sought to refill her  
8 medication. (AR 158). On May 4, 2006, Plaintiff was seen by Matt  
9 Northern, FNP/PA-C, who noted that Plaintiff complained of "back pain"  
10 and had "some lateral swelling" on her right ankle. (AR 154). On June  
11 14, 2006, Plaintiff was seen by Dr. Steve T. Hwang, M.D. (AR 175). On  
12 July 11, 2006, Plaintiff was seen by Dr. Jeffrey Kleis, D.P.M. ("Dr.  
13 Kleis"). (AR 173). On July 14, 2006, Plaintiff was again seen by Nurse  
14 Mohan, who noted that Plaintiff was being seen for a "[c]onsult on  
15 [b]ack pain." (AR 150). On August 7, 2006, Plaintiff was fitted for  
16 an orthotic by Dr. Kleis. (AR 146).

17  
18 Plaintiff's medical records further show that she did not attend  
19 scheduled medical appointments on August 16, 2005, November 23, 2005,  
20 February 6, 2006, May 15, 2006, May 17, 2006, July 31, 2006, August 15,  
21 2006, and August 21, 2006. (AR 144-45, 147, 153, 157, 164, 167, 177).  
22 The records further show that Plaintiff missed three additional medical  
23 appointments for which the date is not legible. (AR 155-56, 176).

24  
25 Finally, Plaintiff was seen by two doctors outside of Universal  
26 Care. On December 19, 2005, Plaintiff was seen by Dr. C. Mark  
27 Mehringer, M.D., who noted that Plaintiff had "[d]egenerative changes"  
28 in her lumbosacral spine, but that no significant changes had occurred

1 since her last examination on February 7, 2005. (AR 172). On May 4,  
2 Plaintiff was seen by Dr. Martin W. Weiler, M.D., who noted that  
3 Plaintiff had a "Plantar spur" in her right ankle. (AR 171).

4

5 **2. State Agency Physician**

6

7 Medical consultant E. Cooper ("Cooper") reviewed Plaintiff's  
8 medical records for the Disability Determination Service ("DDS") and  
9 issued a Physical Residual Functional Capacity Assessment on September  
10 19, 2006. (AR 185-89). Dr. Cooper diagnosed Plaintiff with  
11 "hypertension" and "chronic back pain." (AR 185). Dr. Cooper indicated  
12 that Plaintiff could occasionally lift and/or carry 50 pounds,  
13 frequently lift and/or carry 25 pounds, stand or walk about 6 hours in  
14 an 8-hour workday, and sit about 6 hours in an 8-hour workday. (AR  
15 186). Dr. Cooper found that Plaintiff could push and/or pull without  
16 limitations. (Id.). Dr. Cooper further found that Plaintiff could  
17 occasionally climb, balance, stoop, kneel, crouch, and crawl. (AR 187).  
18 Finally, Dr. Cooper determined that Plaintiff had no manipulative  
19 limitations, visual limitations, communicative limitations, or  
20 environmental limitations. (AR 187-88).

21

22 **3. Plaintiff's Testimony**

23

24 Plaintiff testified at her hearing in response to questions from  
25 both the ALJ and her counsel. (AR 21-38). Plaintiff testified that she  
26 was 5'8" tall and 315 pounds. (AR 21). Plaintiff testified that she  
27 has a valid driver's license, but that she does not drive anymore  
28 because of her "back injury." (AR 23). Plaintiff described her back

1 injury as "degenerative," but was "not . . . sure how [it] operates."  
2 (Id.). Plaintiff explained that she last worked in 2000 as a bus  
3 driver, but that she left the job after having "issues with standing and  
4 bending." (AR 24). Plaintiff "decided to go to school to see if [she]  
5 could possibly do something else," (AR 24), and attended college courses  
6 at Long Beach City College "for two years." (AR 25, 29). Plaintiff was  
7 in a program that would give her a certification in "drug  
8 rehabilitation." (AR 22). Plaintiff testified that she attended school  
9 full time between 2003 and 2005. (AR 37).

10  
11 Plaintiff testified that she bathes, gets dressed, and prepares  
12 meals without assistance. (AR 25). Plaintiff explained that she  
13 sometimes uses an umbrella to assist her in walking, but that her  
14 doctors had not prescribed any assistive device. (AR 25-26). Plaintiff  
15 testified that she leaves the house to go grocery shopping, but "[n]ot  
16 very often." Plaintiff explained that she is able to walk up and down  
17 the aisles "[f]or a short time," but that she always has the help of one  
18 of her sons. (AR 26)

19  
20 Plaintiff described her pain as located in the "lower part of the  
21 spine around to the leg area, all the way down to the ankle" on the  
22 right side. (AR 27-28). Plaintiff further testified that she had pain  
23 in her left leg in the "toe area." (AR 28). Plaintiff explained that  
24 the mobility in her left leg was worse than in her right leg. (Id.).  
25 Plaintiff testified that she first noticed the pain in her left leg  
26 while she was taking college classes in 2005. (AR 29). Plaintiff

1 further testified that she had pain in her "right hip area" and that  
2 "[a]t times it feels dislocated" causing her to walk "crooked." (AR  
3 29).

4

5 Plaintiff testified that she is "consistently" trying to lose  
6 weight but that "it's very difficult." (AR 30). One of Plaintiff's  
7 doctors suggested that she might have a gastric bypass, but did not  
8 recommend it. (Id.). Her doctors have also said that surgery on her  
9 back would be a "last resort." (Id.). Plaintiff explained that she  
10 tries to treat her back with "Hydrocodone" and "Soma," but that the  
11 medication is no longer effective because her body is "used to it." (AR  
12 31).

13

14 When asked how far she could walk "in minutes," Plaintiff testified  
15 that she could only walk "maybe two yards." (AR 31). However,  
16 Plaintiff then admitted that she had walked "a block" from her car to  
17 get to the hearing and that she was capable of walking "a couple of  
18 blocks." (AR 31-32). Plaintiff next testified that she never leaves  
19 her home, but then conceded that she sometimes goes grocery shopping.  
20 (AR 31-32).

21

22 Finally, Plaintiff testified that she did not think she could do  
23 a job eight hours a day. (AR 34). Plaintiff explained that she did not  
24 think she "could last" because "standing is very painful" and "[s]itting  
25 is painful." (Id.). Plaintiff testified that she lays down during the  
26 day for "four hours periodically" and stays "in bed for days." (AR 35).  
27 Plaintiff explained that she tries not to lift more than 15 pounds  
28 because it causes sharp pain in her back. (AR 35).

## THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

To qualify for disability benefits, a claimant must demonstrate a medically determinable physical or mental impairment that prevents him or her from engaging in substantial gainful activity<sup>5</sup> and that is expected to result in death or to last for a continuous period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of performing the work he or she previously performed and incapable of performing any other substantial gainful employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

To decide if a claimant is entitled to benefits, an ALJ conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- (1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.
- (2) Is the claimant's impairment severe? If not, the claimant is found not disabled. If so, proceed to step three.

<sup>5</sup> Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done for pay or profit. 20 C.F.R. §§ 404.1520, 416.910.

(3) Does the claimant's impairment meet or equal the requirements of any impairment listed at 20 C.F.R. Part 404, Subpart P, Appendix 1? If so, the claimant is found disabled. If not, proceed to step four.

(4) Is the claimant capable of performing her past work? If so, the claimant is found not disabled. If not, proceed to step five.

(5) Is the claimant able to do any other work? If not, the claimant is found disabled. If so, the claimant is found not disabled.

Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari, 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20 C.F.R. §§ 404.1520(b)-(q)(1), 416.920(b)-(q)(1).

The claimant has the burden of proof at steps one through four, and the Commissioner has the burden of proof at step five. Bustamante, 262 F.3d at 953-54. If, at step four, the claimant meets his or her burden of establishing an inability to perform the past work, the Commissioner must show that the claimant can perform some other work that exists in "significant numbers" in the national economy, taking into account the claimant's residual functional capacity, age, education and work experience. Tackett, 180 F.3d at 1100; 20 C.F.R. § 416.920(g)(1). The Commissioner may do so by the testimony of a vocational expert or by reference to the Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P, Appendix 2 (commonly known as "the Grids").

Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both exertional (strength-related) and nonexertional limitations, the Grids are inapplicable and the ALJ must take the testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000).

## THE ALJ'S DECISION

At step one, the ALJ found that Plaintiff has not engaged in substantial gainful activity since July 31, 2006. (AR 11).

At step two, the ALJ found that Plaintiff's severe impairments were a "degenerative disc disease of the lumbar spine, obesity, right plantar fasciitis, tarsal tunnel syndrome of the right foot and bilateral flat feet." (AR 11).

At step three, the ALJ concluded that Plaintiff "does not have an impairment or combination of impairments that meets or medically equals one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1." (AR 11).

At step four, the ALJ found that Plaintiff was "unable to perform any past relevant work." (AR 14). The ALJ found that Plaintiff had the residual functional capacity ("RFC") to "lift and carry 20 pounds occasionally and 10 pounds frequently with the opportunity to alternate sitting and standing at will, occasional ramp/stair climbing, no ladder/rope/scaffold climbing, occasional balance, stoop, kneel, and

1 crouch, no crawling and avoidance of exposure to hazardous machinery and  
2 unprotected heights." (AR 11).

3  
4 Based on Plaintiff's RFC, the ALJ posed the following hypothetical  
5 to the vocational expert ("VE"):

6  
7 [P]lease assume the existence fo the following hypothetical  
8 worker, 48 years of age, 40 at onset, 12th-grade high school  
9 diploma plus 2 years of college, able to lift and carry  
10 occasionally 20 pounds, frequently 10, able to stand and walk  
11 - let's make a straight sit/stand option at will. Postural  
12 limitations, occasional use of stairs, never ladders, ropes  
13 or scaffolds, occasional balancing, occasional stooping,  
14 occasional kneeling, occasional crouching, no crawling, and  
15 let's avoid exposure to hazardous machinery and unprotected  
16 heights. All right. Could such a hypothetical worker do any  
17 of the jobs you've identified as [Plaintiff's] past work?

18  
19 (AR 37).

20  
21 The VE responded that "the job of cashier would be one that would  
22 be within the hypothetical." (AR 38). The ALJ then questioned  
23 Plaintiff about her prior work as a cashier. (Id.). Plaintiff  
24 testified that she only worked part-time as a cashier and that she was  
25 paid minimum wage. (Id.). The ALJ apparently concluded that

1 Plaintiff's ability to work as a cashier did not qualify as a  
 2 substantial gainful activity. (AR 39).<sup>6</sup>

3  
 4 The ALJ asked the VE to assume that Plaintiff's ability to work as  
 5 a cashier did not qualify as a substantial gainful activity and asked  
 6 if there were any other jobs "that such a hypothetical worker could  
 7 perform." (AR 39). The VE responded that such a hypothetical worker  
 8 could work as a parking lot attendant in a booth, a ticket seller, and  
 9 an assembler. (Id.). At step five, the ALJ found that "there are jobs  
 10 that exist in significant numbers in the national economy that the  
 11 claimant can perform." (AR 14).

12  
 13 Based on the above RFC and the testimony of the VE, the ALJ  
 14 concluded that Plaintiff could work as a parking lot attendant, a ticket  
 15 seller, and an assembler. (AR 15). Accordingly, the ALJ determined  
 16 that "a finding of 'not disabled' [was] . . . appropriate." (Id.).

17  
 18 **STANDARD OF REVIEW**

20 Under 42 U.S.C. § 405(g), a district court may review the  
 21 Commissioner's decision to deny benefits. The court may set aside the  
 22 Commissioner's decision when the ALJ's findings are based on legal error  
 23 or are not supported by substantial evidence in the record as a whole.

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25  
 26 <sup>6</sup> At step five, the ALJ asked the VE to assume "that the cashier's  
 27 job was not SGA." (AR 39). In his decision, the ALJ states that in  
 28 response to his hypothetical question, the VE testified that "such a  
 hypothetical individual could not perform the claimant's past relevant  
 work." (AR 14).

Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001); Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996).

"Substantial evidence is more than a scintilla, but less than a preponderance." Reddick, 157 F.3d at 720. It is "relevant evidence which a reasonable person might accept as adequate to support a conclusion." Id. To determine whether substantial evidence supports a finding, the court must "'consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming or reversing that conclusion, the court may not substitute its judgment for that of the Commissioner. Reddick, 157 F.3d at 720-21.

## DISCUSSION

A. The ALJ Appropriately Considered The Limitations Found By Nurse Mohan

Plaintiff asserts that the ALJ failed to properly consider the opinion of Nurse Mohan regarding her physical and mental impairments. (Jt. Stip. at 3). This Court disagrees.

As an initial matter, Plaintiff argues that Nurse Mohan is entitled to treating physician status. (Jt. Stip. 3-4). In general, "[t]he opinions of treating doctors should be given more weight than the opinions of doctors who do not treat the claimant." *Orn v. Astrue*, 495

1 F.3d 625, 632 (9th Cir. 2007) (citing Reddick v. Chater, 157 F.3d 715,  
2 725 (9th Cir. 1998)). An examining physician's opinion, in turn,  
3 generally is afforded more weight than a nonexamining physician's  
4 opinion. Orn, 495 F.3d at 631.

5  
6 However, Nurse Mohan does not qualify as a treating physician  
7 because she is not a licensed doctor. (AR 150); see Shontos v.  
8 Barnhart, 328 F.3d 418, 426 (8th Cir. 2003) (holding that "a nurse  
9 practitioner and certified therapist" did not qualify as treating  
10 physicians because they were not licensed doctors); see also Benton v.  
11 Barnhart, 331 F.3d 1030, 1036-37 (9th Cir. 2003) (citing Shontos).  
12 Indeed, Nurse Mohan signed the Primary Care Progress Record as a member  
13 of the nursing staff and the initials "M.A." following her name indicate  
14 that she has a Master of Arts, not a medical degree. (AR 150).  
15 Pursuant to Social Security Administration regulations, an acceptable  
16 medical source is required to establish the existence of a medically  
17 determinable impairment. 20 C.F.R. § 416.913(a). An acceptable medical  
18 source is defined as a "[l]icensed physician (medical or osteopathic  
19 doctors)[.]" § 416.913(a)(1). A nurse without a medical degree falls  
20 into the category of "[o]ther sources" which are permissible to show the  
21 severity of an impairment, but not to establish the existence of an  
22 impairment. § 416.913(d); see also Shontos, 328 F.3d at 426 ("As a  
23 nurse-practitioner and certified therapist, Ms. Bookmeyer and Ms.  
24 Flaherty fit the criteria of 'other' medical sources, who are  
25 appropriate sources of evidence regarding the severity of a claimant's  
26 impairment, and the affect of the impairment on a claimant's ability to  
27 work."). Indeed, the ALJ was entitled "to accord opinions from other

1 sources less weight than opinions from acceptable medical sources."

2 Gomez v. Chater, 74 F.3d 967, 970-71 (9th Cir. 1996).

3

4        Regardless of the appropriate weight, Nurse Mohan did not  
5 "establish[] an opinion that clearly identifies the Plaintiff's physical  
6 and mental problems," as Plaintiff claims. (Jt. Stip. at 4). Plaintiff  
7 cites to page 150 of the record and states that Nurse Mohan "opined that  
8 the Plaintiff is unable to sit" and "also noted that the Plaintiff gets  
9 angry, occasionally has tears, and is depressed." (Jt. Stip. at 3).  
10 Page 150 of the record is a Primary Care Progress Record dated July 14,  
11 2006, which appears to contain the handwritten notes of Nurse Mohan.  
12 (AR 150). It is unclear whether these notes are merely Plaintiff's  
13 complaints or rather if they reflect Nurse Mohan's conclusions about  
14 Plaintiff's medical condition. (Id.). While the handwritten notes are  
15 largely illegible, the Court is able to discern the following relevant  
16 words and phrases: (1) "[c]onsult on [b]ack pain"; (2) "can't sit @  
17 school"; (3) "[g]ets [a]ngry"; (4) "occasionally teary"; (5) "[b]ack  
18 [p]ain"; and (6) "[d]epression." (Id.). Even assuming that these  
19 isolated words and phrases represent Nurse Mohan's conclusions about  
20 Plaintiff's medical condition, they do not explain how these impairments  
21 "significantly limit[] [Plaintiff's] physical or mental ability to do  
22 basic work activities," 20 C.F.R. § 416.920(c), and they provide no  
23 indication that these impairments lasted "a continuous period of at  
24 least 12 months." § 416.909; see also Batson v. Comm'r of the SSA, 359  
25 F.3d 1190, 1195 (9th Cir. 2004) ("The ALJ discounted [the treating  
26 physician's] view because it was in the form of a checklist, did not  
27 have supportive objective evidence, was contradicted by other statements  
28 and assessments of [the plaintiff's] medical condition, and was based

1 on [the plaintiff's] subjective descriptions of pain."); Matney v.  
2 Sullivan, 981 F.2d 1016, 1020 (9th Cir. 1992) ("The ALJ need not accept  
3 an opinion of a physician – even a treating physician – if it is  
4 conclusionary and brief and is unsupported by clinical findings.").

5  
6 Plaintiff argues that the ALJ failed to consider Nurse Mohan's  
7 notation, "can't sit @ school." (Jt. Stip. at 3, 7). However, the RFC  
8 reflects limitations on Plaintiff's ability to remain seated by  
9 including "the opportunity to alternate sitting and standing at will."  
10 (AR 11). Indeed, the ALJ specifically referenced Nurse Mohan's July 14,  
11 2006 Primary Care Progress Record. (AR 13) ("The claimant complained  
12 of back pain on July 14, 2006 and was given pain medications." (footnote  
13 omitted)). Moreover, the state agency physician opined that Plaintiff  
14 could sit "about 6 hours in an 8-hour workday." (AR 186). Indeed,  
15 Plaintiff testified that she was able to attend college "for two years"  
16 after the onset of her impairment, (AR 25), and was able to attend  
17 school full time between 2003 and 2005. (AR 37). Plaintiff never  
18 testified that she could not sit at all, but rather explained that her  
19 problem "was sitting for prolonged periods." (AR 25) (emphasis added).  
20

21 Plaintiff also argues that the ALJ failed to consider Nurse Mohan's  
22 notations, "[g]ets [a]ngry," "occasionally teary," and "[d]epression."  
23 (Jt. Stip. at 3, 7). Plaintiff contends that she "was clearly being  
24 treated for depression," (Jt. Stip. at 3), and cites to the Disability  
25 Report where she wrote that she was taking "Imipramine" for  
26 "depression." (AR 105, 134). However, neither Plaintiff's reference  
27 to being treated for depression nor Nurse Mohan's notations demonstrate  
28 that Plaintiff had depression that "significantly limits [her] physical

1 or mental ability to do basic work activities," 20 C.F.R. § 416.920(c),  
2 or that the depression lasted "a continuous period of at least 12  
3 months." § 416.909; see also Batson, 359 F.3d at 1195 ("The ALJ  
4 discounted [the treating physician's] view because it was in the form  
5 of a checklist, did not have supportive objective evidence, was  
6 contradicted by other statements and assessments of [the plaintiff's]  
7 medical condition, and was based on [the plaintiff's] subjective  
8 descriptions of pain."); Matney, 981 F.2d at 1020 ("The ALJ need not  
9 accept an opinion of a physician – even a treating physician – if it is  
10 conclusionary and brief and is unsupported by clinical findings.").  
Indeed, these are the only references to depression anywhere in the  
12 record that have been identified by the Plaintiff and the Court is  
13 unable to locate any others. (Jt. Stip. at 3-4, 7).

14  
15 Particularly telling is the fact that Plaintiff testified before  
16 the ALJ regarding her impairments and never once mentioned depression.  
17 (AR 20-38). To the contrary, Plaintiff testified that she bathes,  
18 dresses herself, prepares meals, goes grocery shopping, and took college  
19 courses for two years, (AR 25-26, 29), all indications that her  
20 depression does not prevent her from engaging in normal activities like  
21 work. Additionally, when asked by the ALJ what severe impairments  
22 Plaintiff was asserting, Plaintiff's counsel also never mentioned  
23 depression. (AR 20).

24  
25 In sum, the Court finds that the ALJ appropriately considered the  
26 limitations found by Nurse Mohan. Moreover, even if the ALJ erred, the  
27 error was harmless because the ALJ incorporated limitations on sitting  
28 into the RFC determination. See Stout v. Comm'r, SSA, 454 F.3d 1050,

1 1056 (9th Cir. 2006) ("[A] reviewing court cannot consider the error  
2 harmless unless it can confidently conclude that no reasonable ALJ, when  
3 fully crediting the testimony, could have reached a different disability  
4 determination."). Thus, no remand is necessary.

5

6 **B. There Was No Evidence That Plaintiff's Medication Caused Side**  
7 **Effects That Impaired Her Ability To Work**

8

9 Plaintiff asserts that the ALJ failed to properly consider the side  
10 effects of Plaintiff's medications. (Jt. Stip. at 8). This Court  
11 disagrees.

12

13 Plaintiff relies solely on the Disability Report where she  
14 indicated the following side effects for her medications: (1)  
15 "sleepiness," "dizziness," "vertigo," forgetfulness," "itchy feeling,"  
16 "anger," and "stomach irritation." (AR 105); (see Jt. Stip. at 7-9).  
17 Plaintiff argues that the ALJ was "obligated to consider Plaintiff's  
18 claims of side effects." (Jt. Stip. at 11). However, Plaintiff bore  
19 the burden of proving that the side effects of her medication were  
20 disabling. See Miller v. Heckler, 770 F.2d 845, 849 (9th Cir. 1985) ("A  
21 claimant bears the burden of proving that an impairment is disabling.").  
22 Indeed, Plaintiff's isolated references to side effects in the  
23 Disability Report do not demonstrate that the side effects  
24 "significantly limit[ed] [her] physical or mental ability to do basic  
25 work activities," 20 C.F.R. § 416.920(c); see also Miller, 770 F.2d at  
26 849 (claimant failed to meet burden of proving that an impairment is  
27 disabling where he produced no clinical evidence showing that his  
28 prescription narcotic use impaired his ability to work). Other than her

1 reference to these side effects in the Disability Report, Plaintiff  
2 fails to make any other reference to side effects during the  
3 administrative process.

4

5 Moreover, the Court is unable to locate and the Plaintiff has  
6 failed to identify any medical evidence of side effects in the record.  
7 (Jt. Stip. at 7-9, 11-12); see also Nyman v. Heckler, 779 F.2d 528, 531  
8 (9th Cir. 1985) ("[A] claimant's self-serving statements may be  
9 disregarded to the extent they are unsupported by objective findings.").  
10 Again, in her testimony before the ALJ, Plaintiff's never mentioned  
11 suffering from side effects. (AR 20-38).

12

13 In sum, the Court finds that Plaintiff failed to meet her burden  
14 of proving that her medication caused side effects that impaired her  
15 ability to work. Additionally, even if the ALJ erred by failing to note  
16 the potential side effects of Plaintiff's medication, the error was  
17 harmless because there was no evidence of the alleged side effects  
18 limiting her ability to work. See Stout, 454 F.3d at 1056 ("[A]  
19 reviewing court cannot consider the error harmless unless it can  
20 confidently conclude that no reasonable ALJ, when fully crediting the  
21 testimony, could have reached a different disability determination.").  
22 Thus, no remand is necessary.

1       C.    Plaintiff Did Not Assert That She Suffered From A Mental  
2       Impairment

3

4       Plaintiff asserts that the ALJ failed to properly consider the  
5       severity of her mental impairment. (Jt. Stip. at 12). This Court  
6       disagrees.

7

8       Plaintiff argues that the ALJ should have made specific findings  
9       regarding her mental impairment because she "indicated that she had been  
10       seen by a doctor for emotional or mental problems that limit her ability  
11       to work" and "also indicated that she takes Imipramine for treatment of  
12       her depression." (Jt. Stip. at 12). The "Disability Report" form asked  
13       Plaintiff whether she had "been seen by a doctor/hospital/clinic or  
14       anyone else for emotional or mental problems that limit [her] ability  
15       to work" and Plaintiff wrote "Yes." (AR 103). However, when asked to  
16       list the doctors who treated her for these emotional or mental problems,  
17       Plaintiff wrote that she had received treatment for "extreme pain in  
18       back/back/veins in leg," "back, hypertension, hyperlipidemia," and  
19       "domestic violence." (AR 104). Plaintiff did not list any treatment  
20       for depression nor did she identify any doctors or psychologists that  
21       she saw for her alleged mental condition. (Id.). Moreover, when asked  
22       to list the "illnesses, injuries, or conditions that limit [her] ability  
23       to work," Plaintiff wrote "spinal  
24       deterioration/hypertension/cholesterol/degenerative arthritis of the  
25       spinal cord/chronic back pain/fractured vertebrae/right  
26       leg/hip/hyperlipidemia/obesity." (AR 101). Plaintiff did not list  
27       depression or any other mental condition. (Id.).  
28

1       Moreover, as set forth above, Plaintiff testified before the ALJ  
2 and never mentioned depression. (AR 20-38). Indeed, when asked by the  
3 ALJ what severe impairments Plaintiff was asserting, Plaintiff's counsel  
4 also never mentioned depression or any other mental condition. (AR 20).  
5 Given that neither Plaintiff nor her counsel perceived depression as  
6 limiting her ability to work, (AR 101), the ALJ was not obligated to  
7 make specific findings regarding Plaintiff's mental impairment.  
8 Additionally, even if the ALJ erred, the error was harmless because  
9 there was no evidence that any mental impairment limited Plaintiff's  
10 ability to work. See Stout, 454 F.3d at 1056. Thus, no remand is  
11 necessary.

12

13 **D. The ALJ Appropriately Considered Plaintiff's Obesity**

14

15       Plaintiff asserts that the ALJ failed to properly consider her  
16 obesity. (Jt. Stip. at 15-18). This Court disagrees.

17

18       Obesity is no longer a listed impairment, nor was it at the time  
19 of the ALJ's decision on May 8, 2001. See Revised Medical Criteria for  
20 Determination of a Disability, Endocrine System and Related Criteria,  
21 64 F.R. 46122 (1999) (effective October 25, 1999) ("We are deleting  
22 listing 9.09, "Obesity," from appendix 1, subpart P of part 404, the  
23 "Listing of Impairments" (the listings)."). However, an ALJ must still  
24 determine the effect of obesity upon a claimant's other impairments and  
25 its effect on her ability to work and general health. Celaya v. Halter,  
26 332 F.3d 1177, 1182 (9th Cir. 2003).

27

28

1       Contrary to Plaintiff's claim, the ALJ specifically noted  
2 Plaintiff's obesity when he rejected the opinion of the state agency  
3 physician and crafted a more limited RFC:

4  
5       [G]iven the claimant's history of lumbar spine disc disease  
6 as shown by the December 2005 x-rays as well as the  
7 claimant's obesity and bilateral feet problems, the  
8 undersigned gives the claimant the benefit of the doubt and  
9 rejects the assessment from the Disability Determination  
10 Services medical consultant. The undersigned finds, instead,  
11 that the claimant has the residual functional capacity to  
12 lift and carry 20 pounds occasionally and 10 pounds  
13 frequently with the opportunity to alternate sitting and  
14 standing at will, occasional ramp/stair climbing, no  
15 ladder/rope/scaffold climbing, occasional balance, stoop,  
16 kneel, and crouch, no crawling and avoidance of exposure to  
17 hazardous machinery and unprotected heights.

18  
19 (AR 13).

20  
21       Substantial evidence in the record supports the conclusion that the  
22 ALJ in this case properly considered Plaintiff's obesity. The ALJ  
23 reviewed medical records from treating doctors that noted obesity. The  
24 treating doctors, however, never restricted Plaintiff because of that  
25 condition. Instead, they instructed Plaintiff numerous times to  
26 exercise, lose weight, and eat a healthy or low-salt diet. (See AR  
27 158 ("Obesity - Wt. reduction advise"); AR 160 ("Obesity" - "Enroll pt.  
28 in universally fit [exercise program](done)"; AR 166 ("Obesity"

1 "[recommend] low-salt diet" "exercise"). Plaintiff's doctors were not  
2 limiting her due to her obesity, but were encouraging her to lose weight  
3 and exercise.

4

5 The record does not show that Plaintiff's obesity prevented her  
6 from engaging in normal work-like activities. Furthermore, as the ALJ  
7 considered Plaintiff's obesity and its impact on her other impairments  
8 when he gave her a more limited RFC, the Court finds that the ALJ did  
9 not commit error in his consideration of Plaintiff's obesity.  
10 Accordingly, no remand is necessary.

11

12 **E. The Hypothetical Contained All Limitations Supported By**  
**Substantial Evidence**

13

14 Plaintiff asserts that the ALJ did not pose a full hypothetical to  
15 the VE because the hypothetical did not contain mental limitations.  
16 (Jt. Stip. at 20-22). This Court disagrees.

17

18

19 As set forth above, see supra Parts A & C, the record does not  
20 contain substantial evidence of a mental impairment. See Osenbrock, 240  
21 F.3d at 1163 ("An ALJ must propose a hypothetical that is based on  
22 medical assumptions supported by substantial evidence in the record that  
23 reflects each of the claimant's limitations."). Because the record does  
24 not contain substantial evidence of a mental impairment, the ALJ was not  
25 obligated to include such limitations in the hypothetical. See  
26 Osenbrock, 240 F.3d at 1164 ("Because [the plaintiff] did not present  
27 any evidence that he suffers from sleep apnea, diabetes, organic brain  
28 disorder, or hepatitis in support of his disability claim, the ALJ did

1 not err in failing to include these alleged impairments in the  
2 hypothetical question posed to the VE."). Thus, no remand is necessary.  
3

4 **CONCLUSION**  
5

6 Consistent with the foregoing, and pursuant to sentence four of 42  
7 U.S.C. § 405(g),<sup>7</sup> IT IS ORDERED that judgment be entered AFFIRMING the  
8 decision of the Commissioner and dismissing this action with prejudice.  
9 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
10 Order and the Judgment on counsel for both parties.

11  
12 DATED: August 7, 2009.

13 /S/  
14

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15 SUZANNE H. SEGAL  
16 UNITED STATES MAGISTRATE JUDGE  
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27 <sup>7</sup> This sentence provides: "The [district] court shall have power  
28 to enter, upon the pleadings and transcript of the record, a judgment  
affirming, modifying, or reversing the decision of the Commissioner of  
Social Security, with or without remanding the cause for a rehearing."